

Department of Energy

950.7101

used in subsections a., c., and k. of section 170 of the Atomic Energy Act of 1954, as amended, claims for loss of, or damage to, or loss of use of property which is located at the site of and used in connection with the licensed activity where the nuclear incident occurs. *Public liability* also includes damage to property of persons indemnified: Provided, that such property is covered under the terms of the financial protection required, except property which is located at the site of and used in connection with the activity where the nuclear incident occurs.

[49 FR 12039, Mar. 28, 1984, as amended at 50 FR 12185, Mar. 27, 1985; 56 FR 57827, Nov. 14, 1991]

950.7003 Nuclear hazards indemnity.

(a) Section 170d. of the Atomic Energy Act, as amended, requires DOE "to enter into agreements of indemnification with any person who may conduct activities under a contract with (DOE) that involve the risk of public liability * * *." However, DOE contractors whose activities are already subject to indemnification by the Nuclear Regulatory Commission are not eligible for such statutory indemnity. See 950.7006 below.

(b) The Heads of Contracting Activities shall assure that contracts subject to this requirement contain the appropriate nuclear hazards indemnity provisions.

[56 FR 57828, Nov. 14, 1991, as amended at 59 FR 9108, Feb. 25, 1994]

950.7004–950.7005 [Reserved]

950.7006 Statutory nuclear hazards indemnity agreement.

(a) The contract clause contained in 952.250–70 shall be incorporated in all contracts in which the contractor is under risk of public liability for a nuclear incident or precautionary evacuation arising out of or in connection with the contract work, including such events caused by a product delivered to a DOE-owned facility for use by DOE or its contractors. The clause at 952.250–70 shall be included in contracts with architect-engineer contractors for the design of a DOE facility, the construction or operation of which may involve the

risk of public liability for a nuclear incident or a precautionary evacuation.

(b) However, this clause shall not be included in contracts in which the contractor is subject to Nuclear Regulatory Commission (NRC) financial protection requirements under section 170b. of the Act or NRC agreements of indemnification under section 170c. or k. of the Act for activities to be performed under the contract.

[56 FR 57828, Nov. 14, 1991, as amended at 59 FR 9108, Feb. 25, 1994]

950.7007–950.7008 [Reserved]

950.7009 Fees.

No fee will be charged a DOE contractor for a statutory nuclear hazards indemnity agreement.

[49 FR 12039, Mar. 28, 1984, as amended at 56 FR 57828, Nov. 14, 1991]

950.7010 Financial protection requirements.

DOE contractors with whom statutory nuclear hazards indemnity agreements under the authority of section 170d. of the Atomic Energy Act of 1954, as amended, are executed will not normally be required or permitted to furnish financial protection by purchase of insurance to cover public liability for nuclear incidents. However, if authorized by the DOE Headquarters office having responsibility for contractor casualty insurance programs, DOE contractors may be (a) permitted to furnish financial protection to themselves or (b) permitted to continue to carry such insurance at cost to the Government if they currently maintain insurance for such liability.

[56 FR 57828, Nov. 14, 1991]

Subpart 950.71—General Contract Authority Indemnity

950.7101 Applicability.

(a) The DOE also has general contract authority to enter into indemnity agreements with its contractors. Under such authority a certain measure of protection is extended to the DOE contractor against risk of liability, but the assumption of liability by DOE will be expressly subject to the availability of appropriated funds.

Prior to enactment of section 170 of the Atomic Energy Act 1954, as amended, this authority was exercised in a number of Atomic Energy Commission contracts and this type of indemnification remains in some DOE contracts.

(b) It is the policy of the DOE, subsequent to the enactment of section 170, to restrict indemnity agreements with DOE contractors, with respect to protection against public liability for a nuclear incident, to the statutory indemnity provided under section 170. However, it is recognized that circumstances may exist under which a DOE contractor may be exposed to a risk of public liability for a nuclear occurrence which would not be covered by the statutory indemnity.

(c) While it is normally DOE policy to require its non-management and operating contractors to obtain insurance coverage against public liability for nonnuclear risks, there may be circumstances in which a contractual indemnity may be warranted to protect a DOE non-management and operating contractor against liability for uninsured nonnuclear risks.

(d) If circumstances as mentioned in paragraph (b) or (c) of this section do arise, it shall be the responsibility of the Heads of Contracting Activities to submit to the Head of the Agency or designee for review and decision, all pertinent information concerning the need for, or desirability of, providing a general authority indemnity to a DOE contractor.

(e) Where the indemnified risk is nonnuclear, the amount of general authority indemnity extended to a fixed-price contractor should normally have a maximum obligation equivalent to the amount of insurance that the contractor usually carries to cover such risks in its other commercial operations or, if the risk involved is dissimilar to those normally encountered by the contractor, the amount that it otherwise would have reasonably procured to insure this contract risk.

(f) In the event that a DOE contractor has been extended both a statutory indemnity and a general authority indemnity, the general authority indemnity will not apply to the extent that the statutory indemnity applies.

(g) The provisions of this subsection do not restrict or affect the policy of DOE to pay its cost-reimbursement type contractors for the allowable cost of losses and expenses incurred in the performance of the contract work, within the maximum amount of the contract obligation.

[49 FR 12039, Mar. 28, 1984, as amended at 56 FR 28102, June 19, 1991. Redesignated and amended at 56 FR 57828, Nov. 14, 1991; 59 FR 9108, Feb. 25, 1994; 61 FR 21977, May 13, 1996; 62 FR 34861, June 27, 1997]

PART 951—USE OF GOVERNMENT SOURCES BY CONTRACTORS

Subpart 951.1—Contractor Use of Government Supply Sources

Sec.

951.101 Policy.

951.102 Authorization to use Government supply sources.

951.103 Ordering from Government supply sources.

Subpart 951.70—Contractor Employee Travel Discounts

951.7002 Responsibilities.

AUTHORITY: 42 U.S.C. 7254; 40 U.S.C. 486(c).

SOURCE: 49 FR 12042, Mar. 28, 1984, unless otherwise noted.

Subpart 951.1—Contractor Use of Government Supply Sources

951.101 Policy.

(a) It is DOE policy that contractors performing under cost-reimbursement contracts should meet their requirements from Government sources of supply when these sources are available to them, and if it is economically advantageous or otherwise in the best interest of the Government.

951.102 Authorization to use Government supply sources.

(a) The Head of the Contracting Activity may authorize contractors performing under cost-reimbursement contracts and subcontractors performing under cost-reimbursement subcontracts, where all higher tier contracts and subcontracts are cost-type, to use Government supply sources in accordance with the requirements and procedures in FAR Part 51, DOE PMR